UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
UNITED STATES OF AMERICA,

-against-

JOHN GALANIS,

Defendant.
---X

REQUEST TO CHARGE

15 Cr 643(PKC)

Please take notice that the above defendant in the above captioned case respectfully requests that the Court supplement its charge to the jury with the following charges.

YOURS, etc.,

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Clerk of the Court

REQUEST # 1

ROLE OF THE COURT

You have now heard all of the evidence in the case as well as the final arguments of the lawyers for the parties.

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be -- or ought to be -- it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

Now, after listening to my instructions about the law, you will then determine how this case should be decided.

REQUEST #2

ROLE OF THE JURY (EVIDENCE AND NON-EVIDENCE)

As I have said, the members of the jury are the sole and exclusive judges of the facts. You pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the testimony, and you draw whatever reasonable inferences you decide to draw from the facts, as you will determine them.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It is only the answer that is evidence. Any answer that I directed you to disregard or directed struck from the record is also not evidence. Disregard such answers. Questions are relevant only to the extent they enable you to understand the answer. Nor is anything I may have said during the trial or may say during these instructions with respect to a fact matter to be taken in substitution for your own independent recollection. What I say is not evidence.

The evidence before you consists of the answers given by the witnesses -- the sworn testimony they gave from the stand, as you recall it – and the exhibits that were received in evidence, as well as any stipulations.

In this case you have heard evidence in the form of stipulations of testimony. A stipulation of testimony is an agreement among the parties that, if called as a witness, the person would have given certain testimony. You must accept as true the fact that the witness would have given that testimony. However, it is for you to determine the effect to be given that testimony.

You have also heard evidence in the form of stipulations that contain facts that were agreed to be true. You must accept the facts in those stipulations as true.

Since you are the sole and exclusive judges of the facts, I have not meant and do not mean by my words or acts to indicate any opinion as to the facts or what your verdict should be. The rulings that I have made during the trial are not any indication of my views of what your decision should be as to whether or not the guilt of the defendant has been proven beyond a reasonable doubt.

I also ask you to draw no inference from the fact that upon occasion I asked questions of certain witnesses. These questions were only intended for clarification or to expedite matters and certainly were not intended to suggest any opinions on my part as to the verdict you should render or whether any of the witnesses may have been more credible than any other witness. You are expressly to understand that the court has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You have the responsibility of reviewing the evidence, weighing the credibility of the witnesses, separating the important from the unimportant, making the factual determinations that bear on the guilt or lack of guilt of the defendant. You are to perform the duty of finding the facts without bias or prejudice as to any party.

REQUEST #3

CONDUCT OF COUNSEL

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. Counsels also have the right and duty to ask the court to make rulings of law and to request conferences in the robing room or at the side bar, out of the hearing of the jury. I, the court, must decide all those questions of law. You should not show any prejudice against any attorney or his or her client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all the evidence.

REQUEST #4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, there are two types of evidence that you may properly use in deciding whether a defendant is guilty or not guilty.

One type of evidence is called direct evidence. Direct evidence is a witness' testimony as to what he saw, heard or observed. In other words, when a witness testifies about what is known to him of his own knowledge by virtue of his own senses--what he sees, feels, touches or hears--that is called direct evidence.

Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds are drawn and you cannot look outside.

As you are sitting here, someone walks in with an umbrella that is dripping wet. Somebody else then walks in with a raincoat that is also dripping wet.

Now, you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and time these people walked in, it had started to rain.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from an established fact the existence or the nonexistence of some other fact.

Many facts, such as a person's state of mind, can rarely be proved by direct evidence.

Circumstantial evidence is of no less value than direct evidence; it is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting the defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt after review of all of the evidence in the case, direct and circumstantial.

During the trial you may have heard the attorneys use the term "inference" and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists.

There are times when different inferences may be drawn from facts whether by direct or circumstantial evidence. The government may ask you to draw one set of inferences, while the defense may ask you to draw another. Where two equally strong inferences can be drawn from the same facts, one favorable to the prosecution and one favorable to the defendant, then you should draw the inference that is favorable to the defendant.[1] It is for you and you alone to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or a conclusion which you, the jury, are permitted to draw - but not required to draw - from the facts which you find to be proven

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1 See, United v. Glenn, 312 F.3d 58, 70 (2d Cir. 2002) and Charge given by the Hon. Robert P. Patterson in United States v. Martinez-

by either direct or circumstantial evidence. In drawing an inference, you should exercise your common sense.

So while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in the light of your experience.

Here, again, let me remind you that whether based upon direct or circumstantial evidence, or upon logical or reasonable inferences drawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

Sandoval, 01 Cr 307 (RPP)

REQUEST #5

NUMBER OF WITNESSES

The fact that one party introduced more evidence than the other does not mean that you should find the facts in favor of the side offering more evidence. It is the quality of the evidence that governs, not the quantity of evidence. As a matter of fact, as I will explain later, the defendant in a criminal case is under no obligation to present any evidence.

REQUEST #6

CREDIBILITY OF WITNESSES

Now, how do you evaluate the credibility or believability of the witnesses? You have had an opportunity to observe all of the witnesses. It now is your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues under the indictment, in the face of very different pictures painted by the government and the defense that cannot be reconciled. You will now have to decide where the truth lies, and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and the importance of each witness' testimony.

Your decision on whether or not to believe a witness may depend on how the witness impressed you. Was the witness candid, frank and forthright? Or, did the witness seem as if he or she was hiding something, being evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in his or her testimony or did he or she contradict himself or herself? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who was trying to report his or her knowledge accurately?

How much you choose to believe a witness may be influenced by the witness' bias.

Does the witness have a relationship with the government or the defendant that may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth; or, does that witness have some bias prejudice or hostility that may have caused the witness--consciously or not--to give you something other than a completely accurate account of the facts he or she testified to?

Even if the witness was impartial, you should consider whether the witness had an opportunity to observe the facts he or she testified about and you should also consider the witness' ability to express him or herself. Ask yourselves whether the witness' recollection of the facts stands up in the light of all other evidence.

In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given, and in light of all the other evidence in the case, just as you would do in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

REQUEST #7

INTEREST IN OUTCOME

Now, in evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care. This is not to suggest that every witness who has an interest the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interest has affected or colored his or her testimony.

REQUEST #8

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials. The fact that a witness may be employed as a law enforcement official does not mean that his or her testimony is necessarily deserving of more consideration or greater weight than that of an ordinary witness. Also it does not mean that his or her testimony is necessarily deserving of less consideration or less weight than of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

REQUEST #9

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant has pleaded not guilty to the charges in the indictment. As a result of the defendant's pleas of not guilty the burden is on the prosecution to prove the defendant guilty beyond a reasonable doubt. This burden never shifts to the defendant for the simple reason that the law never imposes upon the defendant in a criminal case the burden or duty of testifying, or calling any witnesses or locating or producing any evidence.

The law presumes the defendant to be innocent of all the charges against him. I therefore instruct you that the defendant is to be presumed by you to be innocent throughout your deliberations until such time, if it ever comes, that you as a jury are satisfied that the government has proved him guilty beyond a reasonable doubt.

The defendant began the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit the defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt, after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden, you must find the defendant not guilty.

This presumption was with the defendant when the trial began and remains with him even now as I speak to you and will continue with the defendant into your deliberations unless and until you are convinced that the government has proved his guilt beyond a reasonable doubt.

REQUEST #10

REASONABLE DOUBT

I have said that the government must prove that the defendant is guilty beyond a reasonable doubt. The question that naturally arises is, "What is a reasonable doubt?" What does that term mean? The words almost define themselves. It is a doubt based in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all the evidence in the case.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience and your common sense. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied with the guilt of the defendant, that you do not have an abiding and firm belief of the defendant's guilt; in other words, if you have such a doubt as would reasonably cause a prudent person to hesitate in acting in matters of importance in his own affairs, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do have an abiding belief of the defendant's guilt, such a belief as a prudent person would be willing to act upon in important matters in the personal affairs of his own life, then you have no reasonable doubt, and under such circumstances it is your duty to convict.

One final word on this subject: reasonable doubt is not whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Nor is it sympathy for the defendant. Beyond a reasonable doubt does not mean a positive certainty, or beyond all possible doubt. After all, it is virtually impossible for a person to be absolutely and completely convinced of any contested fact which by its nature is not subject to mathematical proof and certainty. As a result, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

REQUEST #11

PERSONS NOT ON TRIAL

You may not draw any inference, favorable or unfavorable, towards the government or either defendant from the fact that any people other than the defendants are not on trial here. You may also not speculate as to the reasons why other persons are not on trial. Those matters are wholly outside your concern and have no bearing on your functions as jurors.

REQUEST #12

CONSPIRACY: SECOND ELEMENT— MEMBERSHIP IN THE CONSPIRACY

If you conclude that the government has proven beyond a reasonable doubt that the conspiracy charged in the indictment existed, then you must next determine the second question: whether each of the defendants participated individually in the conspiracy charged in the indictment with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

By evidence of the defendants' own individual actions and conduct, the government must prove beyond a reasonable doubt that each defendant knowingly and intentionally entered into the conspiracy with a criminal intent -- that is, with a purpose to violate the law -- and that each agreed to take part in the conspiracy to promote and cooperate in its unlawful objectives. I have already explained the objectives of the conspiracy alleged in the indictment.

"UNLAWFULLY," "INTENTIONALLY" AND "KNOWINGLY" DEFINED

The terms "unlawfully" and "intentionally" and "knowingly" are intended to ensure that if you find that the defendants did join the conspiracy individually, you also must conclude beyond a reasonable doubt that in so doing, each defendant knew what he was doing; in other words that he undertook the actions in question deliberately and voluntarily.

An act is done "knowingly" and "intentionally" if it is done deliberately and purposefully; that is, the defendants' acts must have been the product of the defendants' conscious objectives, rather than the product of a mistake or accident, or mere negligence, or some other innocent reason.

"Unlawfully" simply means contrary to law. The defendants need not have known that each was breaking any particular law or any particular rule. He need only have been aware of the generally unlawful nature of his acts.

"KNOWINGLY"

Now, knowledge is a matter of inference from the proven facts. Science has not yet devised a manner of looking into a person's mind and knowing what the person is thinking. However, you do have before you the evidence of certain acts and conversations alleged to have taken place with each defendant or his presence. The government contends that these acts and conversations show, beyond a reasonable doubt, each defendants' knowledge of the unlawful purposes of the conspiracy.

Each defendant denies that he was a member of a conspiracy. It is for you to determine whether the government has established beyond reasonable doubt that the each defendant had knowledge of an object of the conspiracy and its unlawfulness, and intentionally participated in it.

It is not necessary for the government to show that each defendant was fully informed as to all the details of the conspiracy in order for you to infer knowledge on his part. To have guilty knowledge, a defendant need not have known the full extent of the conspiracy, or all of its activities or all of its participants. It is not even necessary that the defendant know most of the other members of the conspiracy. In fact, a defendant may know only one other member of the conspiracy and still be a coconspirator. Nor is it necessary for a defendant to receive any monetary benefit from his participation in the conspiracy, or to have a financial stake in the outcome, so long as he in fact participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

As I have explained, the conspiracy count in the indictment requires the government to prove that each defendant acted with knowledge of the object of the conspiracy and its unlawfulness.

"INTENTIONALLY"

My last instruction applies only to your conclusion of whether each defendant had knowledge of the unlawful object of the conspiracy. If you decide the defendant had knowledge of the unlawful object of the conspiracy you must make a separate determination of whether he intentionally acted to participate in the conspiracy with knowledge of its unlawful object.

As I have instructed you, the second element the government must prove is that each defendant intentionally became a member of the conspiracy with knowledge of its illegal object. The duration and extent of a defendant's participation has no bearing on the issue of the defendant's guilt. He need not have joined the conspiracy at the outset. He may have joined it at any time in its progress, and he will still be held responsible for all that was done before he joined and all that was done during the conspiracy's existence while he was a member. Each member of a conspiracy may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor roles in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw a defendant within the ambit of the conspiracy if you find that the act was performed with knowledge and intent that it would aid the objective or objectives of the conspiracy.

However, I want to caution you that a person's mere association with a member of a conspiracy does not make that person a member of the conspiracy, even when that association is coupled with knowledge that a conspiracy is taking place. Mere presence at the scene of a crime, even coupled with knowledge that a crime is taking place, is not sufficient to support a conviction. Mere familiarity with a person committing a criminal act and knowledge that he is doing so does not make one a member of his conspiracy. A person may know, be a family member or be friendly with a person committing criminal acts without being a member of his conspiracy. Similarly a person may take actions that further the purposes of the conspiracy without knowledge or intent and that would not make him a member of the conspiracy. In other words, knowledge without agreement and participation is not sufficient. What is necessary is that a defendant has participated in the conspiracy with knowledge of its unlawful purposes, and with intent to aid in the accomplishment of its unlawful objectives.[2]

The government must present evidence of purposeful behavior designed to further a conspiracy to prove each defendants' membership in that conspiracy. The government must prove that each defendant associated with conspirators in furtherance of the conspiracy.[3] A generalized belief or suspicion that something illegal is going on is not sufficient for a rational jury to find that because someone knew someone else was committing a crime means he is also guilty of that crime or acting within a conspiracy to commit that crime. There must be some additional proof offered by the government that each defendant knew something more about the nature of the enterprise and assisted in carrying it out.[4]

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2 See, U.S. v. Cianehetti, 315 F. 2d 584, 588 (2d Cir. 1963)
U.S. v. Steinberg, 525 F. 2d 1126, 1134 (2d. Cir. 1976)
U.S. v. Chang Au Lg, 851 F.2d 547, 554 2d 1988).

3 See, U.S. v. Torres, 519 F.2d 723, 726 (2d 1975)
4 See, U.S. v. Calabro, 467 F.2d 973, 982 (2d 1972)

In sum, the government must prove that each defendant, with an understanding of the unlawful nature of the conspiracy, intentionally acted or assisted in the conspiracy for the purpose of furthering the illegal undertaking. If he did, the defendant thereby became a knowing and willing participant in the unlawful agreement -- that is to say, a conspirator.

A conspiracy, once formed, is presumed to continue until either its objective is accomplished or there is some affirmative act of termination by its members. So, too, once a person is found to be a member of a conspiracy, he is presumed to continue his membership in the venture until its termination, unless it is shown by some affirmative proof that he withdrew and disassociated himself from it.

U.S. v. Callishaw, 428 F.2d 760, 763 (2d Cir. 1970)

REQUEST #13
MULTIPLE DEFENDANTS

The defendant, John Galanis also respectfully requests that the Court charge the jury as to the fact that although multiple defendants are on trial the jury must think of it as separate trials for each defendant and reach separate verdicts for each. The defendant, John Galanis respectfully requests that the Court use the language from Sands, Federal Jury Charges for these charges.

REQUEST #14

DEFENDANT'S RIGHT NOT TO TESTIFY

Some of the defendants did not testify in this case. Under our constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove each defendant's guilt beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to any defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that any defendant did not testify. You may draw no adverse inference against him because he did not take the witness stand. You may not consider this against any defendant in any way in your deliberations in the jury room.

GOVERNMENT'S REQUEST

CONSCIOUS AVOIDANCE

The defendant objects to the Government's request to charge "conscious avoidance". The Government has not proposed any reasons why a "conscious avoidance" charge is applicable and the facts of this case are not within the parameters that give rise to such a charge. The Defendant has not proposed to use any defenses that would open the door to the use of this charge. If during the trial the situation changes, it is respectfully submitted that the Court should resolve the issue at that point.

Dated: New York, New York
June 17, 2016

By:____________________

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